

APPEAL NO. 032411
FILED NOVEMBER 4, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on August 12, 2003. The hearing officer resolved the disputed issue by deciding that on _____, when the respondent (claimant) sustained his work-related injury, the claimant was an employee of (Company R) for workers' compensation purposes. The appellant (carrier) appeals, arguing that the great weight of the evidence establishes that the claimant was an independent contractor. The claimant responded, urging affirmance.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant was an employee of Company R for workers' compensation purposes, at the time of the claimed injury. The Appeals Panel stated in Texas Workers' Compensation Commission Appeal No. 93110, decided March 26, 1993, that whether an individual is an employee or an independent contractor depends upon "whether the purported employer has the right to control the individual in the details of the work to be performed. [Citation omitted.]" This decision went on to state that "[w]here no contract between the parties establishes the employer's right to control the work, the employee-employer relationship may be established circumstantially by evidence of actual exercise of control. [Citation omitted.]" We noted that, in many respects, the 1989 Act's definition of independent contractor incorporates the common-law factors the courts have looked to in analyzing one party's right to control the details of another's work. We stated that such factors may include the independent nature of the worker's business; the worker's obligation to furnish the necessary tools, supplies, and materials to perform the job; the worker's right to control the progress of the work, except as to the final results; the time for which the worker is employed; the method of payment; whether the worker could come and go; whether income taxes were withheld; and whether the work required special skill. We further stated that it does not appear that each and every evidentiary factor in the statutory definition need be present and that each controversy involving whether an injured worker is an employee or independent contractor must be decided on its own particular facts and that, ordinarily, "no one feature of the relationship between the worker and the employer is determinative. [Citation omitted.]" Whether a claimant is an independent contractor or employee is generally a question of fact for the hearing officer to decide. Texas Workers' Compensation Commission Appeal No. 991200, decided July 22, 1999. In the instant case, the hearing officer noted that Company R had the right to control the means and details of accomplishing the work, including the claimant's methods and manner of working as well as the four regular employees, who were all doing the same thing during the same hours at the same site. We have reviewed the evidence and the hearing officer's determinations, and we conclude that

his determinations are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986).

In evidence was a Joint Agreement to Affirm Independent Relationship for Certain Building and Construction Workers (TWCC-83) signed by the claimant and a representative of Company R dated September 6, 2002. The hearing officer discussed the document in his Statement of the Evidence, noting that the TWCC-83 was for a different project. The carrier argues on appeal that the hearing officer's analysis on the TWCC-83 was misplaced and that the 1989 Act contemplates that the TWCC-83 is good for one year and is not concerned with the number of projects or the location of the projects. By its terms the TWCC-83 states that "this declaration takes effect upon receipt by the Texas Workers' Compensation Commission [(Commission)]." Since there was no evidence at the CCH that the TWCC-83 was ever filed with the Commission, we find no reversible error. Section 406.145(a).

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**MR. RUSSELL R. OLIVER, PRESIDENT
221 WEST 6TH STREET
AUSTIN, TEXAS 78701.**

Margaret L. Turner
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Edward Vilano
Appeals Judge